



FACULTY OF LAW
GEORGE WILLIAMS AO

DEAN
ANTHONY MASON PROFESSOR
SCIENTIA PROFESSOR

6 November 2018

Committee Secretary
Standing Committee on Petitions
PO Box 6021
Parliament House
Canberra ACT 2600

Dear Secretary

Inquiry into the Future of Petitioning in the House

Thank you for the opportunity to make a submission to this inquiry. We do so in a personal capacity.

We make two submissions:

- The House of Representatives Standing Orders should be amended so as to provide for guaranteed outcomes for petitions that contain a noteworthy number of signatures. In particular, petitions containing 5,000 signatures should be guaranteed a Ministerial response, while petitions containing 40,000 signatures should be the subject of a parliamentary debate.
- The Standing Committee on Petitions should be empowered to inquire into and engage substantively with the issues raised in petitions, including by referring matters raised in petitions to other parliamentary committees where appropriate to do so.

We note that there have been two key reforms in the past decade which have achieved a measure of improvement in both Government responsiveness to petitions and the

accessibility of the petitions system generally. In 2008 – the same year that the Standing Committee on Petitions was established – Standing Order 209 was amended to introduce an ‘expectation’ that Ministers lodge written responses to referred petitions within 90 days of presentation. In 2016, an e-petitions system was introduced in the House of Representatives, designed to ‘enable members of the public to enter and sign petitions online and track the progress of any petition as it is presented, referred and responded to.’¹ Further, we note the recent *Making Voices Heard* inquiry, culminating in a commitment by the Government on 28 June 2018 to conduct a campaign in 2018-19 promoting petitioning in the House.²

While these are welcome developments, and while the advent of e-petitioning appears to have precipitated a small increase in the use of parliamentary petitions, the short point is that they have done little to reverse the slow and steady extinction of parliamentary petitions at the federal level in Australia, which has been underway since the 1980s. As discussed in a 2016 article by two of the writers of this submission, this decline can be attributed to a number of causes, including disillusion with the effectiveness of petitions, general disengagement from the political process, and the proliferation of other means for obtaining redress, such as ombudsmen and administrative tribunals.³ Negative perceptions about the utility of lodging petitions are not uncommon, with Senator Bob Brown remarking in 1997:

An enormous amount of effort goes into signing petitions, some of them with tens of thousands of signatures. Yet at the end of the day they have little above zero impact on the thinking of we senators.⁴

As the figure below shows,⁵ the decline of petitions has continued unabated over the past three decades, with the number of petitions received annually in the House of Representatives now in the low hundreds, compared with an average of over 2,000 per year in the 1970s and 1980s.

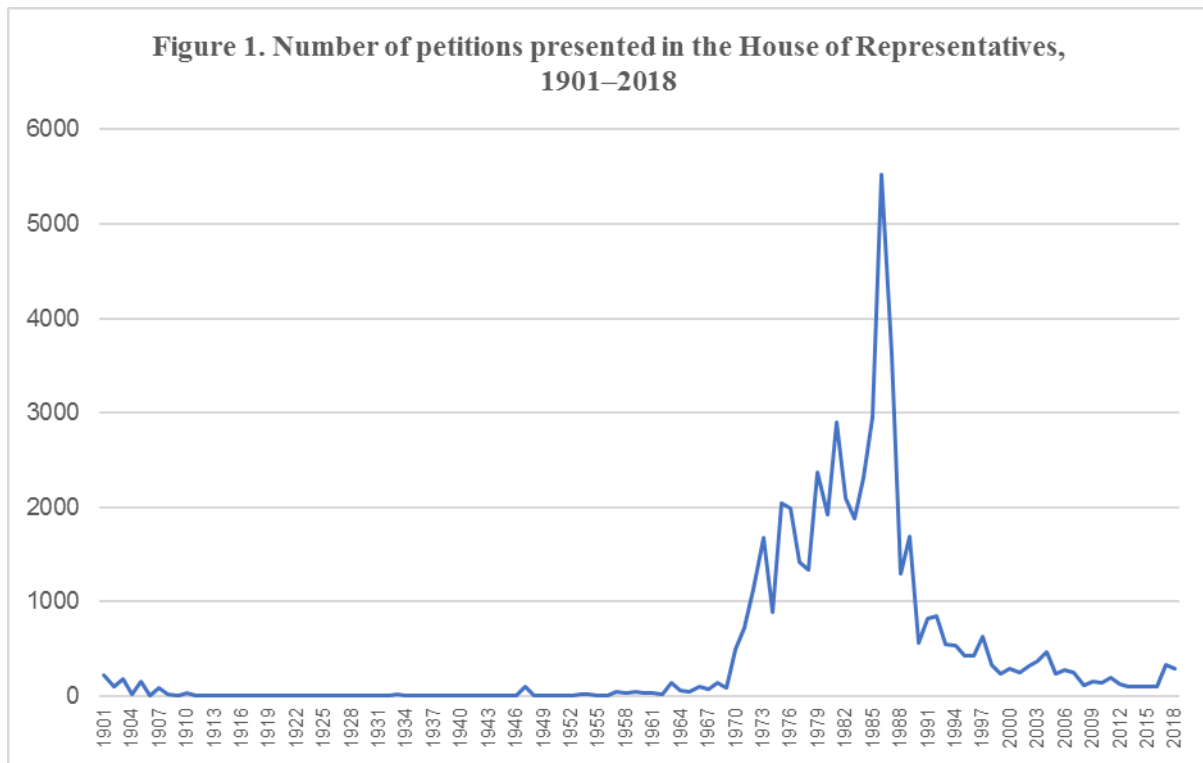
¹ Hon Tony Smith MP, Speaker, *House of Representatives Hansard*, 13 September 2016, pp.675-6.

² Letter from the Hon Tony Smith MP to the Hon Lucy Wicks MP, 28 June 2018 <https://www.aph.gov.au/Parliamentary_Business/Committees/House/Petitions/Inquiryintoe-petitions/Government_Response>.

³ Daniel Reynolds and George Williams, ‘Petitioning the Australian Parliament: Reviving a Dying Democratic Tradition’ (2016) 31(1) *Australasian Parliamentary Review* 60.

⁴ Commonwealth, *Parliamentary Debates*, Senate, 6 March 1997, 1426 (Bob Brown).

⁵ The figure was prepared by the authors on 5 November 2018, and as such does not take into account further petitions that may be received by Parliament in the final two months of 2018.



Of course, the number of petitions received in a year should not be the exclusive metric by which the success of the petitions system is judged. Far more important is the extent to which the petitions system facilitates substantive engagement by parliamentarians with the issues that petitioners care about. Each of our two submissions is directed to that end.

Guaranteed outcomes for petitions reaching particular signature thresholds

The model to emulate is that of the United Kingdom. Before 2015, the status of petitions and their impact on public engagement in the United Kingdom were remarkably similar to the Australian status quo. They were described as a ‘parliamentary backwater’, often not read on the floor until late at night (and then hurriedly). Members were precluded from debating petitions (as is still the case in Australia), while Ministers were not required to respond. Public engagement was similarly tepid, with a report by the House of Commons Procedure Committee in 2008 noting that ‘very often the outcome of the procedure is perceived by petitioners to be inadequate’.⁶

In May 2014, the House of Commons agreed to a motion supporting the establishment of an e-petition system overseen by a purpose-created Petitions Committee, which had a

⁶ UK House of Commons Procedure Committee, *Public Petitions and Early Day Motions* (First Report of Sessions, 2006-07) 8.

substantive role to play in determining how petitions ought to be progressed. Any petition receiving 10,000 signatures was guaranteed a Ministerial response, while any petition receiving 100,000 signatures would be considered for parliamentary debate. The results have been striking. In the 2015–2017 Parliament, nearly 32,000 petitions were lodged and a total of 32 million signatures recorded.⁷ Overall some 43,000 petitions have been lodged since the site went live.⁸ This equates to an average of more than 13,000 petitions per year.⁹ According to the petitions website, 690 petitions have (by virtue of amassing sufficient signatures) received a Ministerial response, while 103 petitions have been debated in Parliament (or are awaiting debate).¹⁰ Compliance with the signature threshold goals has also been high, with a response rate this Parliament of 94% to petitions amassing 10,000 signatures.¹¹ As at the date of writing this submission, the longest time that a petition then awaiting a response had been waiting was 24 days.¹²

Recent petitions have also led to substantive and vibrant debate on policy issues. Of the 40 petitions passing the 100,000-signature threshold this Parliament, 34 have led to debate, while debate has been scheduled for a further four. For the small minority of petitions meeting the threshold that the Committee decides not to refer for debate, it has a policy of specifying why that decision was made.

A recent example of a petition that was referred for debate is a petition lodged this year, amassing over 200,000 signatures, which requested that the Government withdraw its notification under Article 50 of the Treaty of the European Union on the basis that the Leave campaign had breached electoral laws regarding the 2016 EU Referendum. On 10 September 2018, the petition was debated in the House of Commons. The member who moved the bill described the issue as ‘clearly timely, lively and of huge interest’ by virtue of the high number of signatures the petition had amassed, and also drew heavily upon the wording of

⁷ UK House of Commons Library, Briefing Paper Number CBP 8158, ‘Public Engagement in the UK Parliament: Overview and Statistics’ (24 November 2017), 26-8.

⁸ This is a sum of 31,731 during the 2015-2017 Parliament (<https://petition.parliament.uk/archived/petitions?parliament=1&state=all>) and 11,419 to date during the present Parliament (<https://petition.parliament.uk/petitions?state=all>).

⁹ Calculation by authors.

¹⁰ 690 is the sum of 203 (this Parliament) and 487 (last Parliament); 103 is the sum of 38 (this Parliament) and 65 (last Parliament). See <https://petition.parliament.uk/petitions?state=open> and <https://petition.parliament.uk/archived/petitions?parliament=1&state=all>.

¹¹ This figure was reached by dividing 203 (the total number of eligible petitions that had received a Ministerial response at the date of writing this submission) by 216 (the total number of petitions eligible to receive a Ministerial response).

¹² See UK Petitions website **Error! Hyperlink reference not valid.** (https://petition.parliament.uk/petitions?state=awaiting_response).

the petition itself to make his argument.¹³ The debate lasted one hour and 10 minutes and was of a high standard, with members on both sides of the issue exchanging views and arguments that were responsive and constructive. This is now a consistent feature of petition debates in the House of Commons, and one only needs to watch one of these debates for a few minutes to be convinced of their potential to improve substantive engagement with the issues that matter to people in Australia.

As for the proposal that petitions should receive a guaranteed Ministerial response upon reaching a particular signature threshold, it may be asked why such a reform is needed in Australia in circumstances where Standing Order 209(b) provides that the Minister responsible for the administration of the matter raised in a petition ‘shall be expected to respond to a referred petition within 90 days of presentation by lodging a written response with the Committee,’ and where Ministerial responsiveness has markedly improved, with some 77% of petitions lodged this Parliament having received a Ministerial response¹⁴ (compared with 0.001% prior to 2008). The reason is the apparent lack of any connection between how many signatures a petition receives and whether it will receive a response.

In the present Parliament, for instance, a number of petitions containing only 1 signature have received a response, including petitions requesting that cannabis be legalised,¹⁵ that the Wreck Bay Aboriginal Community Council enforce by-laws by way of penalties,¹⁶ and that more science be included in the Australian school curriculum.¹⁷ Conversely, some petitions receiving high numbers of signatures have gone unanswered, including a petition lodged on 17 March 2016 with 2,635 signatures seeking constitutional recognition of Aboriginal and Torres Strait Islander peoples,¹⁸ a petition lodged on 17 August 2015 with 7,656 signatures

¹³ See UK Hansard website (<https://hansard.parliament.uk/commons/2018-09-10/debates/765648D6-5872-49B6-AA13-4E9AC0DA923C/VoteLeaveCampaignElectoralLaw>).

¹⁴ As at the date of writing this submission, 234 petitions had been lodged in the 44th Parliament with 180 of these having received a response.

¹⁵ Lodged on 12 December 2013, responded to on 24 February 2014.

Petition: <https://www.aph.gov.au/~media/Committees/House/Committee/petitions/44th%20Parliament/Attorney-General/Legalisation/851-1319r.pdf>

Response: <https://www.aph.gov.au/~media/Committees/House/Committee/petitions/44th%20Parliament/Attorney-General/Legalisation/851-1319r/Response%2017%20March%202014.pdf>.

¹⁶ Lodged on 1 September 2014, responded to on 22 November 2014.

Petition: <https://www.aph.gov.au/~media/Committees/House/Committee/petitions/44th%20Parliament/Indigenous%20Affairs/Other/949-1418r.pdf>

Response: <https://www.aph.gov.au/~media/Committees/House/Committee/petitions/44th%20Parliament/Indigenous%20Affairs/Other/949-1418r/Response%2023%20February%202015.pdf>.

¹⁷ Lodged on 7 September 2015, responded to on 3 December 2015.

¹⁸ **Petition:** <https://www.aph.gov.au/~media/Committees/House/Committee/petitions/44th%20Parliament/Attorney-General/Other/1139-1646.pdf>.

seeking assistance for persecuted Christians in the Middle East,¹⁹ and a petition lodged on 2 March 2016 with 17,271 signatures seeking better treatment for refugees and asylum seekers.²⁰ It is difficult not to wonder whether this selective approach in responding to some petitions has at times been politically motivated. But what is clear is that it is an affront to the thousands of people who signed such petitions to simply ignore them. A fairer and more rational approach to determining which petitions receive responses, and an approach that is more respectful to those who go to the effort of creating and signing such petitions, is to set a signature threshold beyond which a petition will be guaranteed a Ministerial response.

The particular thresholds actually adopted in the United Kingdom, whose population is 2.6 times greater than that of Australia, are clearly not suitable for this country. Accordingly, the thresholds that we propose have been reduced proportionately to reflect Australia's smaller population: we propose that petitions containing 5,000 signatures should be guaranteed a Ministerial response, while petitions containing 40,000 signatures should ordinarily (if not always, as is presently the case with all petitions presented to the NSW Parliament with 10,000 or more signatures) be the subject of a parliamentary debate, with reasons given in the rare cases where the Standing Committee on Petitions decides not to refer a petition for debate.

Substantive powers for the Standing Committee on Petitions

We have already mentioned that we support a role for the Standing Committee on Petitions in determining whether to refer a petition with sufficient signatures for parliamentary debate. However, if that were the only way in which the Committee's functions were to be enlarged, it would largely remain (as it has been since its inception) a Committee primarily focussed on technical and procedural aspects of petitions, rather than the substantive issues raised by petitions themselves.

Standing Order 220 provides that the functions of the Standing Committee on Petitions are 'to receive and process petitions, and to inquire into and report to the House on any matter relating to petitions and the petitions system.' While the phrase 'any matter relating to petitions' is sufficiently broad to empower the Committee to consider the substance of

¹⁹ **Petition:** <https://www.aph.gov.au/~media/Committees/House/Committee/petitions/44th%20Parliament/Foreign%20Affairs/Middle%20East/1046-1536r.pdf>.

²⁰ **Petition:** <https://www.aph.gov.au/~media/Committees/House/Committee/petitions/44th%20Parliament/Immigration%20and%20Border%20Protection/Other/1138-1645.pdf>.

petitions rather than merely their form, early in its life the Committee chose to interpret Standing Order 220 narrowly in favour of a confined, mechanical role:

The fundamental role of receiving and processing petitions remains the most significant part of the current Committee's work, with most private meeting time devoted to assessing petitions for compliance and deliberating over correspondence on petitions.²¹

The role of the Committee stands in strong contrast to its contemporaries, such as Scotland's Public Petitions Committee (**PPC**) and the UK Petitions Committee, which have broad remits allowing them to take substantive action in relation to petitions. The PPC's mandate allows it to 'consider and report on – whether a public petition is admissible; and what action is to be taken upon the petition'.²² It has a wide range of actions it may pursue for those ends, including consulting the Executive or other public bodies to request additional information or clarification; requesting that a Minister or other official appear before the Committee to give evidence; referring petitions to relevant subject committees for information, consideration or action; and recommending that a petition be debated in Parliament.²³ The UK Petitions Committee has similarly broad functions: for instance, it announced an inquiry into funding for research into brain tumours in 2015.

Petitions committees with substantive powers are more responsive to petitioners' concerns and improve public engagement with Parliament and its democratic processes. A good example can be found in the PPC's role in bringing about a National Action Plan on Child Sexual Exploitation. In July 2011, the PPC received a petition calling on the Parliament to 'commission new research on the nature and scope of child sexual exploitation in Scotland' and to develop 'new guidelines' on tackling that problem. Two months later, the Committee took evidence from the chief petitioner and another witness, agreeing at that meeting to write to the Scottish Government and various institutions and organisations seeking responses to points raised in the petition and during the discussion. It followed this up with further letters the following month. After taking additional evidence and producing a scoping paper on the issue, it launched a public inquiry involving the convening of public panels, two tranches of

²¹ Standing Committee on Petitions, Parliament of Australia, *The Work of the Petitions Committee: 2010–2013 – An Established Part of the Democratic Process* (2013) 2.7.

²² Public Petitions Committee, The Scottish Parliament, Remit & Responsibilities <http://www.scottish.parliament.uk/parliamentarybusiness/CurrentCommittees/29875.aspx>.

²³ Karen Ellingford, 'The Purpose, Practice and Effects of Petitioning the Victorian Parliament' (2008) 23(2) *Australasian Parliamentary Review* 86, 109.

evidence, the production of an official committee report containing substantive recommendations for reform and a series of responses from the Scottish Government, which ultimately led to the Government's creation of the Action Plan. The substantive and detailed extent of this response illustrates the potential for petitioners' concerns to be properly heard and considered. As the Scottish Parliament's Presiding Officer, Mr George Reid MSP, stated in regard to the PPC's process 'This is a very innovative way of engaging with the public. The agenda ... is set entirely by the public and I think that's one of the best things that it has in its favour'.²⁴

While it may be some time before functions such as these are conferred on the Standing Committee on Petitions in Australia, one power that we submit should now be conferred on the Committee is the power to consider the terms of petitions received and to make recommendations that petitions be referred to other House committees for further consideration. This 'inter-committee referral power' has been the subject of requests for reform by the Petitions Committee and its predecessor, the Procedure Committee, for the past thirty years without success. It is a modest proposal which would enable petitions to be looked at by those parliamentarians with ongoing responsibility or expertise in the matters to which the petitions relate. While the proposal has previously been rejected on the basis that 'programming ought to remain the prerogative of the Government',²⁵ that is to miss the point: the very reason petitions exist is to create one small area of parliamentary activity where it is the public, rather than the Government, which determines the issues to be considered. Indeed, this feature points to another reason why the Government should be an enthusiastic supporter of petitions: if the public adopts petitions in sufficiently large measure, they will come to serve as a useful source of data for parliamentarians about the issues that their constituents care most about and the relative depth of community interest in those issues (identifiable by reference to the number of signatures each petition receives).

Empowering the Petitions Committee with such a power, or better still, powers more closely approximating those of its UK and Scottish counterparts (such as powers to hold inquiries and call witnesses) would constitute real progress towards making petitioners feel that their concerns have been taken seriously. It takes significant resources to keep the Standing Committee on Petitions (and other parliamentary committees like it) operating throughout the

²⁴ Karen Ellingford, 'The Purpose, Practice and Effects of Petitioning the Victorian Parliament' (2008) 23(2) *Australasian Parliamentary Review* 86, 109.

²⁵ Standing Committee on Petitions, Parliament of Australia, *Making a Difference: Petitioning the House of Representatives* (August 2007) 64.

year. To deploy those resources for essentially bureaucratic purposes alone is to waste the time and energy of both the parliamentarians who serve on the Committee, and the petitioners who come to them seeking redress.

Yours sincerely

Mr Sam Lee

Social Justice Intern, Gilbert + Tobin Centre of Public Law, University of New South Wales

Mr Daniel Reynolds

Solicitor, Herbert Smith Freehills; Researcher, Gilbert + Tobin Centre of Public Law, University of New South Wales

Professor George Williams AO

Dean, Anthony Mason Professor and Scientia Professor, University of New South Wales;
Foundation Director, Gilbert + Tobin Centre of Public Law, University of New South Wales